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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5881 OF 2005

Smt. Sitabai Shankar Salunke ... Petitioner

Vs.

Shri Ganpat Sitaram Vartale & Ors. ... Respondents

Mr. J.S. Deo for the petitioner.

Mr. A.M. Joshi for respondent 7.

CORAM: SMT. RANJANA DESAI, J.

DATED: 13TH SEPTEMBER, 2005.

P.C.:-

1. The petitioner is the third party. The petitioner has challenged in this writ petition order dated 1/7/2005 passed by the 3rd Ad-hoc Addl. District Judge, Pune, rejecting the petitioner's application praying that she may be impleaded as party respondent in Civil Appeal No.758 of 2002.

2. According to the petitioner, one Sitaram Bagaji Wartale was the original owner of the suit property. He agreed to sell the suit property to the petitioner vide the agreement to sell dated 6/1/1982. The total consideration was agreed at Rs.1,10,000/- and an amount of Rs.90,000/- was paid to Wartale by the petitioner. It is the case of the petitioner that Wartale avoided to execute the sale deed even though the petitioner time and again called upon him to do so.

3. On 15/9/1983, Wartale executed an agreement to sell the suit property in favour of respondent 7. The said agreement is dated 15/9/1983. In the year 1993, Wartale expired. On 15/5/1998, the legal heirs of Wartale i.e. respondents 1 to 4 executed a registered sale deed in favour of respondents 5 and 6. In the year 1999, respondent 7 filed R.C.S. No.1660 of 1999 for specific performance of agreement dated 15/9/1983 executed by Wartale. The suit was filed against respondents 1 to 6. It was prayed that the sale deed be executed in favour of respondent 7 and the sale deed executed in favour of respondents 5 and 6 by respondents 1 to 4 be cancelled. On 22/4/2002, the said suit was decreed. Respondents 5 and 6 preferred Civil Appeal No.758 of 2002 against respondents 1 to 4 and 7 in the court of the District Judge, Pune. It is the case of the petitioner that for the first time, on 19/7/2004 she came to know about the subsequent agreement to sell dated 15/9/1983 and the sale deed dated 15/5/1998 regarding the suit property. On 28/3/2005, the petitioner, therefore, filed R.C.S. No.436 of 2005 for specific performance of agreement to sell dated 6/1/1982 against the respondents. That suit is pending. On 29/3/2005, the petitioner made an application being Ex-63 in Civil Appeal No.758 of 2002 for impleading herself as a party to the said civil appeal and for stay of the proceedings of the said appeal till the hearing and final disposal of R.C.S. No.436 of

2005. That application was rejected and, hence, this writ petition.

4. I have heard, at some length, the learned counsel appearing for the petitioner. He contended that it is only on 19/7/2004 that the petitioner learnt about the agreement to sell dated 15/9/1983 and the sale deed dated 15/5/1998. Thereafter on 28/3/2005, she filed a suit for specific performance of agreement to sell dated 6/1/1982 against the respondents. The learned counsel submitted that it is necessary that the petitioner should be impleaded as party respondent in Civil Appeal No.758 of 2002 as the suit property involved in the said appeal and in R.C.S. No.436 of 2005 is the same and any order passed in Civil Appeal No.758 of 2002 would affect the decision in R.C.S. No.436 of 2005. He submitted that the lower appellate court has wrongly rejected the said application.

5. In my opinion, the lower appellate court has rightly rejected the application. It is difficult to believe that it is only on 19/7/2004 the petitioner, for the first time, came to know about the subsequent agreements. If it is the case of the petitioner that out of the total consideration of Rs.1,10,000/-, she has paid an amount of Rs.90,000/- to Wartale then, she would have filed a suit for specific performance of the said agreement immediately after the said Wartale avoided to execute the sale deed. It is inconceivable that she would wait till

2005 to file a suit for specific performance. It is also significant to note that there was no opposition to her impleadment by the appellant in Civil Appeal No.758 of 2002. This also creates doubt about the petitioner's bonafides. In the circumstances, no interference is necessary with the impugned order. The petition is rejected. However, in the circumstances of the case, if an application is made by the petitioner for expeditious hearing of R.C.S. No.436 of 2005, the learned judge seized of the matter shall consider the said application sympathetically and he shall deal with the said application uninfluenced by the observations made by me in this order.

6. Petition is rejected.

(SMT. RANJANA DESAI, J.)